



Cboe Options Regulatory Circular RG19-017
C2 Options Regulatory Circular RG19-014

Date: April 26, 2019

To: Trading Permit Holders

From: Regulatory Division

RE: Amendments to the Exchanges' Disciplinary Processes

A rule change amending various rules within Chapter 17, *Discipline*, of the Cboe Exchange, Inc. ("Cboe Options") Rulebook was recently filed with the Securities Exchange Commission, and will become effective May 26, 2019.¹ As a result of the changes various processes concerning investigative and disciplinary matters involving Cboe Options and C2 Options (collectively, the "Exchanges") Trading Permit Holders ("TPHs") and persons associated with TPHs ("associated persons") are being amended.² The amended processes are generally consistent with that of the Exchanges' affiliate exchanges.

Specifically, the proposed amendments will, among other things, authorize the Exchange's Chief Regulatory Officer ("CRO") to initiate charges and, in certain instances, impose sanctions. The Business Conduct Committee ("BCC") will continue to preside over a hearing on the charges. A hearing will now be held before a panel of either three or five BCC members selected by the Chairperson of the BCC (the "Hearing Panel").

The following further describes the above referenced changes and highlights certain other changes to applicable Chapter 17 Rules. Please consult the rule filing for full details of the changes.

Rule 17.4 - Charges

Rule 17.4 is being amended to, among other things, authorize the CRO, as opposed to the BCC, to initiate charges against a person or organization alleged to have committed a violation ("Respondent") within the disciplinary jurisdiction of the Exchange. Where applicable, corresponding changes were made throughout Chapter 17 of the Rulebook to replace BCC with CRO.³

Rule 17.2 - Complaint and Investigation

Pursuant to Rule 17.2(d), prior to submitting its report of a corresponding investigation, the Regulatory staff will notify the person(s) who is subject of the report (the "Subject") of the general nature of the allegations and of the specific provisions of the Securities Exchange Act of 1934, rules and regulations promulgated thereunder, Bylaws or Rules of the Exchange or any interpretation thereof or any resolution of the Board regulating the conduct of business on the Exchange, that appear to have been violated.

¹ See Securities Exchange Act Release No. [34-85727](#) (April 26, 2019) ([SR-CBOE-2019-025](#)).

² Cboe Options Chapter 17 Rules are incorporated by reference into the Cboe C2 Options ("C2 Options") Rulebook.

³ References to the BCC were also updated to CRO in Rules 17.2, 17.3, 17.4, 17.7, 17.8, 17.11 and 17.14.

As amended, under Rule 17.2(d) the Subject will now have 25 days (as opposed to 15 days), unless the CRO determines expeditious action is required, from the date of notification described in Rule 17.2(d) to submit a written statement to the CRO concerning why no disciplinary action should be taken. The 25-day period to submit a written statement will toll while any request for access to the investigative file pursuant to 17.2(d) is pending.

Interpretation and Policy .02 to Rule 17.2 will also allow a Subject the same 25-day period to submit a videotaped response. The amended rule now specifies that videotaped responses may not exceed 12 minutes in length and must be accompanied by a written transcript of the response.

Rule 17.3 - Expedited Proceedings

Rule 17.3 is being amended to, among other things, grant the CRO the authority to accept or reject a Subject's letter of consent. In addition, the Subject will now have 25 days (as opposed to 15) to attempt to dispose of a matter through a letter of consent. The Subject must submit a written notice to the Regulatory staff electing to proceed in an expedited manner under Rule 17.3 within 25 days from the date of the notification described in Rule 17.2(d). If the Regulatory staff and the Subject are able to agree on the terms of a letter of consent, Staff will submit the letter to the CRO for consideration. If the CRO accepts the letter of consent, the Exchange adopts the letter of consent as its decision and no further action shall be taken against the Subject with respect to the matters that are the subject of the letter of consent. If the CRO rejects the letter of consent, the matter proceeds as though the letter of consent had not been submitted. The CRO's decision to accept or reject a letter of consent is final.

Rule 17.5 - Answer

Rule 17.5 is also being amended to extend the period of time in which a Respondent has to submit a written answer to charges against the Respondent to 25 days after the service of such charges on the Respondent. The 25-day period to submit a written answer will toll while any request for access to the investigative file pursuant to Rule 17.4(c) is pending.

Rule 17.6 - Hearing

Rule 17.6(a) is being amended such that hearings on charges will be held by Hearing Panels which, as noted above, will now consist of either three or five members of the BCC selected by the Chairperson of the BCC. The Hearing Panel will exercise the same authority as the BCC. Where applicable, corresponding changes are being made throughout Chapter 17 of the Rulebook to replace BCC with Hearing Panel.⁴

In conjunction with the amendments described above to Rule 17.6(a), the Exchange is also adding subsections (a)(1)-(a)(3) to Rule 17.6 which, among other things, provide for Hearing Panel member impartiality and recusal and removal processes for Hearing Panel members. The amendments are discussed in additional detail below.

Rule 17.6(a)(1) clarifies that Hearing Panel Members are expected to function impartially and independently of the Regulatory staff members who prepared and prosecuted the charges. If a Hearing

⁴ References to the Hearing Panel were also updated within Rules 17.9, 17.10, 17.11, 17.14 and 17.50.

Panel member determines they have a conflict of interest or bias or other circumstances exist where their fairness might be reasonably questioned, then such Hearing Panel member shall withdraw from the matter and the Chairperson of the BCC will appoint a replacement.

Rule 17.6(a)(2) permits a Respondent to move for disqualification of any member of the Hearing Panel based upon bias or conflict of interest within 15 days of the appointment of the Hearing Panel. The motion must be made in writing and state with specificity the facts and circumstances giving rise to the alleged bias or conflict of interest. The motion papers are to be filed with the Chairperson of the BCC. The Exchange may file a brief in opposition to the Respondent's motion within 15 days of service thereof.

Pursuant to Rule 17.6(a)(3), the Hearing Panel, excluding the member of the Hearing Panel at issue, will rule upon a motion for disqualification no later than 30 days from the date of filing by the Respondent. If the Hearing Panel believes the Respondent has provided satisfactory evidence in support of the motion to disqualify, the member of the Hearing Panel at issue will remove themselves and request the Chairperson of the BCC to reassign the hearing to another member of the BCC. If the Hearing Panel determines that the Respondent's grounds for disqualification are insufficient, it will deny the Respondent's motion for disqualification by setting forth the reasons for the denial in writing and the Hearing Panel will precede with the hearing. The ruling by the Hearing Panel on such motions is not subject to interlocutory review.

Finally, Rule 17.6(b) as amended, gives the parties 15 business days' notice of the time and place of the hearing. Additionally, each party to the hearing is required to furnish the Hearing Panel and the opposing party with copies of all documentary evidence the party intendeds to present at the hearing not less than 10 business days in advance of the scheduled hearing.

Rule 17.7 - Summary Proceedings

Rule 17.7, as amended, authorizes the CRO, as opposed to the BCC, to make a determination without a hearing and to impose a penalty as to violations which the Respondent has admitted or has failed to answer or which otherwise do not appear to be in dispute. Notice of such summary determination, specifying the violations and penalty, will be served upon the Respondent, who has 10 business days from the date of service to notify the CRO that the Respondent desires a hearing upon all or a portion of any charges not previously admitted or upon the penalty. Failure to notify the CRO constitutes admission of the violations and acceptance of the penalty as determined by the CRO and a waiver of all rights of review.

Rule 17.8 - Offers of Settlement

Rule 17.8, as amended, among other things, removes the 120-day period following service of a statement of charges during which a Respondent may make a settlement offer under Rule 17.8(a). Interpretation and Policy .02 to Rule 17.8 permits a Respondent to propose a written offer of settlement during the course of any proceeding under Chapter 17. If the Respondent wants to submit an offer of settlement subsequent to a hearing being scheduled pursuant to Rule 17.6, the Hearing Panel shall grant the parties leave from the hearing for the offer of settlement to be presented to the CRO for consideration under Rule 17.8(a).

Rule 17.9 - Decision

Rule 17.9, as amended, removes the requirement that decisions of a Hearing Panel be subject to automatic review if the Hearing Panel is not comprised of a majority of the BCC. This amendment corresponds with the amendment to Rule 17.6 limiting the size of the Hearing Panel to three to five members of the BCC.

Rule 17.12 - Service of Notice

Rule 17.12, as amended, provides the Respondent with three additional days to the prescribed period to respond to any charges, notices or other documents if service of such charges, notices or other documents is made by registered or certified mail.

Rule 17.15 - Ex Parte Communications

Rule 17.15, among other things, relocates language previously in Rule 17.4(d) and its Interpretations and Policies .01 through .03 regarding ex parte communications to its own specific rule. Several additions were made to Rule 17.15 to align, to the extent possible, the Exchange rule language pertaining to ex parte communications with that of the other Cboe affiliated exchanges.⁵ Certain additions to Rule 17.15 are highlighted in further detail below.

First, as amended, the named parties in the rule prohibited from making or knowingly causing to be made ex parte communications now includes Exchange staff members. Rule 17.15(a)(1) specifies that TPHs, persons associated with TPHs and Exchange staff members are included within the scope of persons prohibited from making or knowingly causing to be made ex parte communications pertaining to a proceeding with any member of the Hearing Panel, Business Conduct Committee, Board or committee of the Board who is participating in a decision with respect to that proceeding (defined as an “Adjudicator”). Similarly, Rule 17.15(a)(2) clarifies that Adjudicators are prohibited from making or knowingly causing to be made ex parte communications with TPHs, persons associated with TPHs and Exchange staff members.

Second, as amended, Rule 17.15(b) describes the procedure by which an Adjudicator who receives, makes, or knowingly causes to be made a communication prohibited by Rule 17.15 must follow to place the prohibited communication into the record.

Third, as amended, Rule 17.15(c) clarifies that the Exchange’s Board of Directors (the “Board”) or a committee of the Board has the authority to take whatever action it deems appropriate in the interests of justice, including dismissal or denial of the offending party’s interest or claim, if a prohibited ex parte communication has occurred. All participants to a proceeding may respond to any allegations or contentions contained in a prohibited ex parte communication placed in the record and such responses will also be placed in the record.

Finally, 17.15(d) clarifies that the prohibitions against ex parte communications in Rule 17.15 will apply beginning with the initiation of an investigation as provided in Rule 17.2(a), unless the person

⁵ See Rule 8.16 of Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc. and Cboe EDGX Exchange, Inc. regarding ex parte communications.

responsible for the communication has knowledge that an investigation is to be initiated, in which case the prohibitions shall apply beginning at the time of the person's acquisition of such knowledge.

Rule 17.50 - Imposition of Fines for Minor Rule Violations⁶

Rule 17.50, as amended, among other things, removes references to matters referred to the BCC at specified thresholds after a specified number of repeat violations (i.e. "subsequent offenses"). Subsequent offenses which were previously subject to automatic BCC referral will now be subject to a fine. The amendments do not limit or alter the Exchange's ability, pursuant to Rule 17.50(f), to refer conduct prohibited by Rule 17.50 for formal disciplinary action whenever the Exchange determines that the violation is intentional, egregious or not otherwise minor in nature.

Additional Information

Any questions regarding this Regulatory Circular may be referred to Regulatory Interpretations at: RegInterps@cboe.com or 312-786-8141.

⁶ C2 Options will submit a rule filing to remove references to the BCC in certain subsections of Rule 17.50 only applicable to C2 Options at a later date.